



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

KENNETH MCSWAIN, §
§
vs. § CIVIL ACTION NO. 1:21-1594-MGL-SVH
§
CHEROKEE COUNTY DETENTION CENTER, §
Defendant. §

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THIS ACTION WITH PREJUDICE
IN ACCORDANCE WITH FED. R. CIV. P. 41(B)**

Plaintiff Kenneth McSwain (McSwain) filed this 42 U.S.C. § 1983 action against Defendant Cherokee County Detention Center. The matter is before the Court for review of the Report and Recommendation of the United States Magistrate Judge suggesting to the Court that this action be dismissed with prejudice in accordance with Fed. R. Civ. P. 41(b). The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on June 29, 2021, but McSwain failed to file any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

Therefore, after a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court this action is **DISMISSED WITH PREJUDICE** in accordance with Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

Signed this 25th day of October, 2021, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

McSwain is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.